

any portion of an employer's initial allocable share is unassessable as with-  
drawal liability because of the limita-  
tions in section 4225 of ERISA, the plan  
sponsor shall allocate any such  
unassessable amounts among all other  
liable employers. This allocation shall  
be done by prorating the unassessable  
amounts on the basis of each such em-  
ployer's initial allocable share. No em-  
ployer shall be liable for unfunded  
vested benefits allocated under para-  
graph (c)(1) or this paragraph to an-  
other employer that are determined to  
be unassessable or uncollectible subse-  
quent to the plan sponsor's demand for  
payment of reallocation liability.

(3) *Special rule for certain employers with no or reduced initial withdrawal liability.* If an employer has no initial withdrawal liability because of the ap-  
plication of the free-look rule in sec-  
tion 4210 of ERISA, then, in computing  
the fraction prescribed in paragraph  
(c)(1), the plan sponsor shall use the  
employer's allocable share of unfunded  
vested benefits, determined under sec-  
tion 4211 of ERISA at the time of the  
employer's withdrawal and adjusted in  
accordance with section 4225 of ERISA,  
if applicable. If an employer's initial  
withdrawal liability was reduced pur-  
suant to section 4209(a) or (b) of ERISA  
and the employer is not liable for *de  
minimis* amounts pursuant to § 4219.13,  
then, in computing the fraction pre-  
scribed in paragraph (c)(1) of this sec-  
tion, the plan sponsor shall use the em-  
ployer's allocable share of unfunded  
vested benefits, determined under sec-  
tion 4211 of ERISA at the time of the  
employer's withdrawal and adjusted in  
accordance with section 4225 of ERISA,  
if applicable.

(d) *Plan rules.* Plans may adopt rules  
for calculating an employer's initial al-  
locable share of the plan's unfunded  
vested benefits in a manner other than  
that prescribed in paragraph (c)(1) of  
this section, provided that those rules  
allocate the plan's unfunded vested  
benefits to substantially the same ex-  
tent the prescribed rules would. Plan  
rules adopted under this paragraph  
shall operate and be applied uniformly  
with respect to each employer. If such  
rules would increase the reallocation  
liability of any employer, they may be  
effective with respect to that employer

earlier than three full plan years after  
their adoption only if the employer  
consents to the application of the rules  
to itself. The plan sponsor shall give a  
written notice to each contributing  
employer and each employee organiza-  
tion that represents employees covered  
by the plan of the adoption of plan  
rules under this paragraph.

#### § 4219.16 Imposition of liability.

(a) *Notice of mass withdrawal.* Within  
30 days after the mass withdrawal valu-  
ation date, the plan sponsor shall give  
written notice of the occurrence of a  
mass withdrawal to each employer that  
the plan sponsor reasonably expects  
may be a liable employer under  
§ 4219.12. The notice shall include—

(1) The mass withdrawal valuation  
date;

(2) A description of the consequences  
of a mass withdrawal under this sub-  
part; and

(3) A statement that each employer  
obligated to make initial withdrawal  
liability payments shall continue to  
make those payments in accordance  
with its schedule. Failure of the plan  
sponsor to notify an employer of a  
mass withdrawal as required by this  
paragraph shall not cancel the employ-  
er's mass withdrawal liability or waive  
the plan's claim for such liability.

(b) *Notice of redetermination liability.*  
Within 30 days after the date as of  
which the plan sponsor is required  
under § 4219.11(b)(2) to have determined  
the redetermination liability of em-  
ployers, the plan sponsor shall issue a  
notice of redetermination liability in  
writing to each employer liable under  
§ 4219.12 for *de minimis* amounts or 20-  
year-limitation amounts, or both. The  
notice shall include—

(1) The amount of the employer's li-  
ability, if any, for *de minimis* amounts  
determined pursuant to § 4219.13;

(2) The amount of the employer's li-  
ability, if any, for 20-year-limitation  
amounts determined pursuant to  
§ 4219.14;

(3) The schedule for payment of the  
liability determined under paragraph  
(f) of this section;

(4) A demand for payment of the li-  
ability in accordance with the sched-  
ule; and

(5) A statement of when the plan sponsor expects to issue notices of reallocation liability to liable employers.

(c) *Notice of reallocation liability.* Within 30 days after the date as of which the plan sponsor is required under § 4219.11(b)(3) to have determined the reallocation liability of employers, the plan sponsor shall issue a notice of reallocation liability in writing to each employer liable for reallocation liability. The notice shall include—

(1) The amount of the employer's reallocation liability determined pursuant to § 4219.15;

(2) The schedule for payment of the liability determined under paragraph (f) of this section; and

(3) A demand for payment of the liability in accordance with the schedule.

(d) *Notice to employers not liable.* The plan sponsor shall notify in writing any employer that receives a notice of mass withdrawal under paragraph (a) of this section and subsequently is determined not to be liable for mass withdrawal liability or any component thereof. The notice shall specify the liability from which the employer is excluded and shall be provided to the employer not later than the date by which liable employers are to be provided notices of reallocation liability pursuant to paragraph (c) of this section. If the employer is not liable for mass withdrawal liability, the notice shall also include a statement, if applicable, that the employer is obligated to continue to make initial withdrawal liability payments in accordance with its existing schedule for payment of such liability.

(e) *Combined notices.* A plan sponsor may combine a notice of redetermination liability with the notice of and demand for payment of initial withdrawal liability. If a mass withdrawal and a withdrawal described in § 4219.18 occur concurrently, a plan sponsor may combine—

(1) A notice of mass withdrawal with a notice of withdrawal issued pursuant to § 4219.18(d); and

(2) A notice of redetermination liability with a notice of liability issued pursuant to § 4219.18(e).

(f) *Payment schedules.* The plan sponsor shall establish payment schedules

for payment of an employer's mass withdrawal liability in accordance with the rules in section 4219(c) of ERISA, as modified by this paragraph. For an employer that owes initial withdrawal liability as of the mass withdrawal valuation date, the plan sponsor shall establish new payment schedules for each element of mass withdrawal liability by amending the initial withdrawal liability payment schedule in accordance with the paragraph (f)(1) of this section. For all other employers, the payment schedules shall be established in accordance with paragraph (f)(2).

(1) *Employers owing initial withdrawal liability as of mass withdrawal valuation date.* For an employer that owes initial withdrawal liability as of the mass withdrawal valuation date, the plan sponsor shall amend the existing schedule of payments in order to amortize the new amounts of liability being assessed, *i.e.*, redetermination liability and reallocation liability. With respect to redetermination liability, the plan sponsor shall add that liability to the total initial withdrawal liability and determine a new payment schedule, in accordance with section 4219(c)(1) of ERISA, using the interest assumptions that were used to determine the original payment schedule. For reallocation liability, the plan sponsor shall add that liability to the present value, as of the date following the mass withdrawal valuation date, of the unpaid portion of the amended payment schedule described in the preceding sentence and determine a new payment schedule of level annual payments, calculated as if the first payment were made on the day following the mass withdrawal valuation date using the interest assumptions used for determining the amount of unfunded vested benefits to be reallocated.

(2) *Other employers.* For an employer that had no initial withdrawal liability, or had fully paid its liability prior to the mass withdrawal valuation date, the plan sponsor shall determine the payment schedule for redetermination liability, in accordance with section 4219(c)(1) of ERISA, in the same manner and using the same interest assumptions as were used or would have been used in determining the payment schedule for the employer's initial

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withdrawal liability. With respect to reallocation liability, the plan sponsor shall follow the rules prescribed in paragraph (f)(1) of this section.

(g) *Review of mass withdrawal liability determinations.* Determinations of mass withdrawal liability made pursuant to this subpart shall be subject to plan review under section 4219(b)(2) of ERISA and to arbitration under section 4221 of ERISA within the times prescribed by those sections. Matters that relate solely to the amount of, and schedule of payments for, an employer's initial withdrawal liability are not matters relating to the employer's liability under this subpart and are not subject to review pursuant to this paragraph.

(h) *Cessation of withdrawal liability obligations.* If the plan sponsor of a terminated plan distributes plan assets in full satisfaction of all nonforfeitable benefits under the plan, the plan sponsor's obligation to impose and collect liability, and each employer's obligation to pay liability, in accordance with this subpart ceases on the date of such distribution.

(i) *Determination that a mass withdrawal has not occurred.* If a plan sponsor determines, after imposing mass withdrawal liability pursuant to this subpart, that a mass withdrawal has not occurred, the plan sponsor shall refund to employers all payments of mass withdrawal liability with interest, except that a plan sponsor shall not refund payments of liability for *de minimis* amounts to an employer that remains liable for such amounts under §4219.18. Interest shall be credited at the interest rate prescribed in subpart C and shall accrue from the date the payment was received by the plan until the date of the refund.

### § 4219.17 Filings with PBGC.

(a) *Filing requirements.* The plan sponsor shall file with PBGC a notice that a mass withdrawal has occurred and separate certifications that determinations of redetermination liability and reallocation liability have been made and notices provided to employers in accordance with this subpart.

(b) *Who shall file.* The plan sponsor or a duly authorized representative acting on behalf of the plan sponsor shall sign

and file the notice and the certifications.

(c) *When to file.* A notice of mass withdrawal for a plan from which substantially all employers withdraw pursuant to an agreement or arrangement to withdraw shall be filed with the PBGC no later than 30 days after the mass withdrawal valuation date. A notice of mass withdrawal termination shall be filed within the time prescribed for the filing of that notice in part 4041A, subparts A and B, of this chapter. Certifications of liability determinations shall be filed with the PBGC no later than 30 days after the date on which the plan sponsor is required to have provided employers with notices pursuant to §4219.16.

(d) *Where to file.* The notice and certifications may be sent by mail or submitted by hand during normal working hours to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(e) *Filing date.* For purposes of paragraph (c)—

(1) The notice is considered filed on the date of the postmark stamped on the cover in which the notice is mailed if—

(i) The postmark was made by the United States Postal Service; and

(ii) The notice was mailed postage prepaid, properly packaged and addressed to the PBGC.

(2) If both conditions described in paragraph (e)(1) are not met, the notice is considered filed on the date it is received by the PBGC, except that notices received after regular business hours are considered filed on the next regular business day.

(f) *Contents of notice of mass withdrawal.* If a plan terminates by the withdrawal of every employer, a notice of termination filed in accordance with part 4041A, subparts A and B, of this chapter shall satisfy the requirements for a notice of mass withdrawal under this subpart. If substantially all employers withdraw from a plan pursuant to an agreement or arrangement to withdraw, the notice of mass withdrawal shall contain the following information:

(1) The name of the plan.